

Election

In response to the Restriction Requirement, Applicants elect, with traverse, ***Group I, claims 1-7***, which is drawn to a method for detecting multidrug resistance in a test neoplastic cell comprising measuring the level of triosephosphate isomerase.

A restriction requirement requires that the Examiner establish (A) the inventions are independent, *and* (B) the examination of the inventions will impose a serious burden on the Examiner (see MPEP § 803). To establish serious burden, the examiner must show by prior explanation that the inventions are either A) classified separately, B) have attained a separate status in the art, or C) require a different field of search (see MPEP § 808.02). In addition, if the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions (see MPEP § 803).

Applicants respectfully assert that Groups I, II, X, and XI should be regrouped because the Office Action does not provide a sufficient explanation as to establish serious burden. The Groups identified in the Office Action are classified together in class 435. In addition, Groups I and X are classified in the subclass (subclass 7.21), and Groups II and XI are classified together in the same subclass (subclass 4) (see Office Action, pp. 2-3). The Office Action has further failed to cite patents or other art to show that the Groups have attained separate status in the field to which the Groups belong (see MPEP § 808.02). Moreover, the Office Action does not provide sufficient explanation as to the requirement that the different groups will demand different fields of search. Accordingly, the Office Action does not provide the prior explanation necessary to establish that a search of Groups I, II, X, and XI together would be a serious burden.

Moreover, Applicants respectfully aver that examination of Groups I, II, X, and XI together would not impose a serious burden because the inventions are directed to similar methods of detecting multidrug resistance and detecting whether a cell is neoplastic (see Application, pg. , lines - ; in Example , pg. , line to pg. , line). The examination of the claims of Groups I, II, X, and XI would require a search for methods for detecting for the expression of triosephosphate to determine whether cells have acquired multidrug resistance or neoplastic characteristics. For the purposes of the search, it should not matter that the methods have different starting materials, nor should it matter that the methods can be utilized in different cell

types or with different binding agents (see Office Action, pg. 4). Regardless of the different starting materials or cell types used or types of detection claimed in Groups I, II, X, and XI, the examination would require a search for methods utilizing binding agents to detect the expression of triosephosphate isomerase, and comparing the expression level detected to a control level of triosephosphate isomerase expression.

For the reasons discussed above, Applicants respectfully request that Groups I, II, X, and XI be regrouped and examined together.

Species Election

At page 6 of the Office Action, Applicants are requested to further elect a species from species subgroups 1-3. In response to the Election Requirement applicable to **Group I** identified on page 8 of the Office Action, Applicants elect, with traverse, an ovarian cell for species group 1, ovary for species group 2, and SKOV-3 for species group 3.

According to MPEP § 803.02, it is improper for the Office to refuse to examine that which applicants regard as their invention, unless the subject matter in a claim lacks unity of invention. Unity of invention exists where compositions included in the Markush group 1) share a common utility, and 2) share a substantial structural feature essential to that utility.

Applicants respectfully assert that the species of genres 1 and 3 share a common utility and a substantial structural feature essential to the utility, and the species should be examined together. Genuses 1 and 3 encompass neoplastic cells and cell lines. The neoplastic cells and cell lines share the same utility in that the neoplastic cells and cell lines are utilized in the method of detecting multidrug resistance. In addition, the neoplastic cells and cell lines share the structural feature of being neoplastic cells that have multidrug resistance potential. This feature is essential to the method of detecting multidrug resistance in neoplastic cells. Therefore, genres 1 and 3 share a common utility and a substantial structural feature essential to the utility.

For the foregoing reasons, Applicants respectfully request that the Election Requirement be reconsidered, and grouped such that species 1 and 3 are examined together.

Applicants respectfully request that upon allowance of a generic claim that additional species, which are written in dependent form or otherwise include all limitations of the generic claim, be examined in the instant application (see 37 CFR 1.141). Applicants further request that where product claims are allowed, any withdrawn process claims that depend from or otherwise

include all limitations of the allowed product claims be rejoined in accordance with MPEP § 821.04.

Conclusion

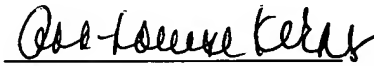
Applicants respectfully request that the Restriction Requirement be reconsidered and withdrawn. In its place, Applicants respectfully request that Groups I, II, X, and XI be regrouped and examined together.

No additional fees are due in connection with this response. However, if any additional fees are due, please charge any underpayments or credit any overpayments to Deposit Account No. 08-0219.

If there are any questions regarding this matter, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,

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